

## **ATTACHMENT 3**

2007.05.04 08:56:05  
Kansas Corporation Commission  
/S/ Susan K. Duffy

In the Matter of the Application of a Review of the Commission's )  
Federal USF Certification Requirement to Remove All Expenses )  
and Investments by Competitive Eligible Telecommunications )  
Carriers in a Southwestern Bell Telephone, L.P., Study Area from )  
the Competitive Eligible Telecommunications Carrier's )  
Justification of Use of High Cost Federal Support. )

Docket No. 07-GIMT-498-GIT

STATE CORPORATION COMMISSION

MAY 04 2007

 Docket  
Room

Direct Testimony

Prepared By

Janet Buchanan

On Behalf Of

Kansas Corporation Commission Staff

1    **Q     Please state your name and business address.**

2    A     My name is Janet Buchanan. My business address is: Kansas Corporation  
3           Commission, 1500 S.W. Arrowhead Rd., Topeka, Kansas 66604-4027.

4

5    **Q     In what capacity are you employed by the Commission?**

6    A     I am employed as the Chief of Telecommunications. My responsibilities include  
7           the analysis of various issues related to regulatory policy and the analysis of  
8           certain technical issues.

9

10   **Q     What is your educational background?**

11   A     I received a Bachelor of Arts degree and a Master of Arts degree, both in  
12          economics, from the University of Kansas.

13

14   **Q     Have you previously testified before the Commission?**

15   A     Yes. I have provided testimony regarding issues in the telecommunications, gas  
16          and electric industries. Regarding telecommunications issues I have provided  
17          testimony in Docket No. 99-GIMT-784-GIT, Docket No. 98-GIMT-712-GIT,  
18          Docket No. 99-GCCZ-156-ETC, Docket No. 97-SCCC-149-GIT, Docket No. 01-  
19          GIMT-082-GIT, Docket No. 02-SWBT-920-MIS, Docket No. 02-SWBT-934-  
20          MIS, Docket No. 02-GIMT-555-GIT, Docket No. 02-GIMT-678-GIT, Docket  
21          No. 05-SWBT-997-PDR and Docket No. 06-SCCC-200-MIS.

22

23   **Q     What is the purpose of your testimony?**

1     A     The purpose of this testimony is to provide the Commission with Staff's analysis  
2           of the appropriate method to be used to certify that a carrier has made proper use  
3           of high-cost support received from the Federal Universal Service Fund ("USF").  
4           Regarding USF support, the Federal Telecommunications Act ("FTA") at Section  
5           254(e) states that "[a] carrier that receives such support shall use that support only  
6           for the provision, maintenance, and upgrading of facilities and services for which  
7           the support is intended." Specifically, I provide Staff's analysis supporting the  
8           continued use of the methodology adopted by the Commission in Docket No. 05-  
9           GIMT-112-GIT as a means for certifying that support has been used for its  
10          intended purpose. In that proceeding, the Commission determined, among other  
11          things, that because Southwestern Bell Telephone, L.P. (now AT&T) does not  
12          receive high-cost support for which certification is necessary<sup>1</sup>, a competitive  
13          eligible telecommunications carrier ("ETC") cannot rely on expenditures and  
14          investments made in an AT&T service area to justify the certification of its use of  
15          the high-cost USF support it receives.

16  
17           **Universal Service Support**

18     **Q     In general, what is the purpose of universal service support?**

19     A     The Federal Communications Commission ("FCC") stated that,  
20           [o]ne primary purpose of universal service support has  
21           always been to support telecommunications service in high-  
22           cost areas where such service would be relatively  
23           expensive. This has been accomplished by subsidizing

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<sup>1</sup> AT&T receives Interstate Access Support ("IAS") which is a category of high-cost support. However, the FCC does not require the Commission to certify that this support is used properly. Carriers submit certification forms related to the use of IAS directly to the FCC.

1 carriers to enable them to serve high-cost consumers at  
2 below-cost rates.<sup>2</sup>  
3

4 In the past, much of this subsidization occurred through a rate design process that  
5 permitted monopoly carriers to charge rates to some types of customers (urban,  
6 business) that were higher than the actual cost of providing service to those  
7 customers which enabled the carriers to charge rates lower than cost to other  
8 customers more costly to serve (rural, residential). Additionally, access charges  
9 enabled carriers to recover costs that were not recovered through local rates.  
10 However, in a competitive environment, such an implicit form of subsidy would  
11 not be sustainable since new entrants would charge cost-based rates in urban areas  
12 winning customers from the incumbent (which was charging rates above cost) and  
13 eroding the subsidy. Thus, it was determined that subsidies should be made  
14 explicit. This has been done through the creation of the USF and, in Kansas, the  
15 Kansas Universal Service Fund ("KUSF").  
16

17 **Q How is USF support to be used by an ETC?**

18 A The FTA at Section 254(e) states that "[a] carrier that receives such support shall  
19 use that support only for the provision, maintenance, and upgrading of facilities  
20 and services for which the support is intended."  
21

22 **Q Who is responsible for making sure USF support is used appropriately?**

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<sup>2</sup> In the Matter of Federal-State Joint Board on Universal Service and In the Matter of Access Charge Reform, CC Dockets No. 96-45 and 96-262, *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45 and Fourth Report and Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking*, released May 28, 1999, paragraph 6. (*Seventh Report and Order*)

1     A     In its *Ninth Report and Order*, the FCC determined that states should account for  
2           the appropriate use of USF support by non-rural carriers by providing a  
3           certification to the FCC.<sup>3</sup> The FCC stated that it would not dictate how states  
4           determine whether certification should be provided. The FCC stated support  
5           should be utilized consistent with Section 254 of the FTA.<sup>4</sup> In its *Fourteenth*  
6           *Report and Order*, the FCC extended the states certification responsibilities to  
7           USF support received by rural carriers and competitive ETCs.<sup>5</sup> Again, the FCC  
8           did not specify criteria to be used by the states. The FCC did provide states with  
9           suggestions for certification in its *ETC Designation and Certification Order*  
10          which is discussed later in this testimony.

11

## 12     **Summary of Current Methodology**

13     **Q     When did the Commission adopt its current procedures for certifying the use**  
14           **of USF support?**

15     A     The Commission first adopted certification procedures following the release of  
16          the FCC's *Fourteenth Report and Order*.<sup>6</sup> The Commission developed self-

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<sup>3</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, *Ninth Report and Order and Eighteenth Order on Reconsideration*, released November 2, 1999, paragraph 95. (*Ninth Report and Order*)

<sup>4</sup> *Id.*

<sup>5</sup> In the Matter of Federal-State Joint Board on Universal Service and Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Dockets No. 96-45 and 00-256, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96045, and Report and Order in CC Docket No. 00-256*, released May 23, 2001, paragraphs 187-190. (*Fourteenth Report and Order*)

<sup>6</sup> Because AT&T did not receive high-cost support, the Commission did not provide certification to the FCC as directed in the *Ninth Report and Order* for non-rural carriers.

1 certification forms in Docket No. 01-GIMT-595-GIT.<sup>7</sup> The Commission adopted  
2 its current procedures through an order issued on July 21, 2005, in Docket No. 05-  
3 GIMT-112-GIT.

4  
5 **Q How were these procedures developed?**

6 A On August 5, 2004, Staff provided the Commission with a memorandum  
7 recommending that the Commission revisit its USF certification process. Staff  
8 noted that in hearings held regarding ETC designations, parties raised concerns  
9 about the Commission's self-certification process. Additionally, Staff noted that  
10 the Federal-State Joint Board on Universal Service ("Joint Board") issued a  
11 Recommended Decision on February 27, 2004 which suggested that the FCC  
12 encourage states to consider whether more rigorous review may be needed to  
13 ensure that USF support is used properly. The Commission initially adopted  
14 forms attached to Staff's memorandum for immediate use; however, on  
15 reconsideration, the Commission permitted carriers to continue to self-certify that  
16 they had used USF support properly and provided parties with an opportunity to  
17 file comments on the forms developed by Staff. After comments were filed,  
18 parties were invited to participate in a workshop to attempt to reach resolution of  
19 identified issues.

20  
21 The Commission's current procedures were formulated through the workshop  
22 process in which interested parties provided feedback on Staff's suggested

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<sup>7</sup> In the Matter of a General Investigation to Ensure Compliance with Section 254(e) of the Federal Telecommunications Act of 1996, Docket No. 01-GIMT-595-GIT, *Order 4 Adopting Final Certification Form and Granting Sprint's Motion*, August 20, 2002.

1 reporting requirements. Representatives for Sage Telecom Inc., RCC Minnesota  
2 Inc., ALLTEL of Kansas, AT&T, Sprint (now two separate entities; Embarq and  
3 Sprint), Citizens' Utility Ratepayer Board ("CURB"), Nex-Tech, the rural  
4 independent local exchange carriers and Staff participated in the workshop.  
5 While much was resolved through the workshop, a few issues were left for  
6 Commission determination. The Commission issued an order on April 13, 2005,  
7 with a copy of Staff's report on the certification process and requested comment  
8 on the unresolved issues. After receiving comments, the Commission made its  
9 determinations on the unresolved issues and required carriers to utilize the new  
10 forms and instructions for the USF certification process in 2005. The  
11 Commission noted that it might amend the forms and procedures once the FCC  
12 issued an order on the Joint Board's recommendations.

13  
14 **Q Briefly, what procedures and forms were developed for USF certification?**

15 **A** It was agreed that ETCs would continue to self-certify the use of funds for the  
16 prospective year. The parties also agreed to provide historic information for the  
17 Commission to verify that USF support was actually used for its intended purpose  
18 as had been previously self-certified by the ETC. To provide the Commission  
19 with sufficient information to make this determination, it was agreed that all  
20 ETCs would provide the line count information that they submit to either the  
21 National Exchange Carrier Association or the Universal Service Administrative  
22 Company. Additionally, all ETCs would provide a narrative report documenting  
23 new investment by town or exchange, the amount of the investment, and a



1 description of the investment. It was determined that two forms would be needed  
2 for reporting the historic accounting data used to document expenditures related  
3 to the provisioning of services of universal service and the maintenance and  
4 upgrading of facilities used to provision such services. Because of differences in  
5 the manner in which data is maintained, one form would be utilized by incumbent  
6 ETCs and the other would be utilized by competitive ETCs. Additionally, it was  
7 agreed that allocations could be used to include only those expenditures related to  
8 universal service in supported areas.

9  
10 **Q Was the issue of excluding expenditures in areas where the incumbent does**  
11 **not receive USF support discussed?**

12 **A** Yes. Staff's report on the workshops indicates that "[t]he process provides an  
13 allocation of investment and expenses to the USF supported areas as needed."<sup>8</sup> In  
14 a footnote, Staff states that,

15 [u]nlike rural [incumbent local exchange carriers], the  
16 [competitive ETC] may operate in exchanges that receive  
17 support as well as ones that do not. For example, a wireless  
18 ETC may construct a tower that serves both supported and  
19 unsupported exchanges. Consequently, a method is needed  
20 to identify the costs for the USF supported areas. See the  
21 instructions for the [competitive ETC] cost reports.<sup>9</sup>  
22

23 The "USF Certification Instructions for Cost Reporting" attached to Staff's report  
24 on the workshops, contains additional discussion of the issue. The instructions

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<sup>8</sup> In the Matter of Certification of Compliance with Section 254(e) of the Federal Telecommunications Act of 1996, and Non-Rural Carrier Certification of Urban/Rural Rate Comparability, Docket No. 05-GIMT-112-GIT, *Order Accepting Staff Report on the USF Certification Process and Scheduling Comments*, April 13, 2005, Attachment, page 3. (*Order Accepting Staff Report*)

<sup>9</sup> *Id.* Attachment, footnote 2, page 3.

1 state that “[a]mounts reported should reflect the amounts actually used to provide  
2 universal service in the supported areas for which support was paid.”<sup>10</sup>

3 Additionally, the instructions provide guidance on the use of allocation methods.

4 The instructions state:

5 [Competitive ETCs], especially, may serve exchanges that  
6 are USF supported as well as areas that are not USF  
7 supported. Some costs may be specific to the USF  
8 supported area, while others may involve both areas. A  
9 number of valid methods are available to make these  
10 allocations.<sup>11</sup>  
11

12 The instructions then provide a discussion of acceptable means of allocating  
13 investment and expenses.

14  
15 Additionally, the Commission’s July 21, 2005 order addressed whether  
16 competitive ETCs should be required to provide USF information by incumbent  
17 ETC study area. The Commission determined that this was not necessary since  
18 investment in telecommunications is characterized as uneven. However, the  
19 Commission noted that it “. . . should require proof that all ETCs spend USF  
20 funding within supported areas to provide universal service.”<sup>12</sup>  
21

22 **Q Did the Commission amend these forms and procedures following the FCC’s**  
23 **order on the Joint Board’s recommendations?**

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<sup>10</sup> *Id.* Attachment 5, page 3.

<sup>11</sup> *Id.* Attachment 5, page 4.

<sup>12</sup> In the Matter of Certification of Compliance with Section 254(e) of the Federal Telecommunications Act of 1996, and Non-Rural Carrier Certification of Urban/Rural Rate Comparability, Docket No. 05-GIMT-112-GIT, *Order*, July 21, 2005, paragraph 9.

1     A     While not directly related to the certification of the proper use of USF support, the  
2           Commission has expanded the information that must be certified each year. In  
3           Docket No. 06-GIMT-446-GIT, the Commission determined that ETCs must also  
4           submit information regarding outages, the number of complaints per 1000  
5           handsets or lines, the company's advertising of service, compliance with the  
6           Commission's quality of service standards or the CTIA code, verification of  
7           ability to function in an emergency, and a two-year service quality improvement  
8           plan. The Commission is currently seeking comment on drafts of forms  
9           incorporating requests for this information into the current certification forms.

10

11           **Competitive Neutrality and Portability of Support**

12     Q     **Questions have been raised regarding whether the Commission's**  
13           **certification procedures are competitively neutral. What is meant by**  
14           **"competitive neutrality" in the context of universal service?**

15     A     With the offering of explicit subsidies, new policies were developed. Among the  
16           new policies, the concept of competitive neutrality was developed by the Joint  
17           Board and adopted by the FCC in its May 8, 1997, *Report and Order*.<sup>13</sup> The FCC  
18           concluded that the principle of competitive neutrality should be considered in  
19           addition to the universal service principles set out in the FTA at Section 254 upon  
20           which policies for the preservation and advancement of universal service would  
21           be based. That is, the FCC considered the concept of competitive neutrality to be  
22           consistent with the intent of Congress to promote both the goals of universal

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<sup>13</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, released May 8, 1997. (*Report and Order*)

1 service and a competitive framework for the provisioning of telecommunications  
2 services.<sup>14</sup>

3 The FCC defined competitive neutrality as:

4 Universal service support mechanisms and rules should be  
5 competitively neutral. In this context, competitive  
6 neutrality means that universal service support mechanisms  
7 and rules neither unfairly advantage or disadvantage one  
8 provider over another, and neither unfairly favor nor  
9 disfavor one technology over another.<sup>15</sup>

10  
11 The FCC clarified that the principle of competitive neutrality included the concept  
12 of technological neutrality. The FCC stated:

13 Technological neutrality will allow the marketplace to  
14 direct the advancement of technology and all citizens to  
15 benefit from the development. By following the principle  
16 of technological neutrality, we will avoid limiting providers  
17 of universal service to modes of delivering that service that  
18 are obsolete or not cost effective. . . . We anticipate that a  
19 policy of technological neutrality will foster the  
20 development of competition and benefit certain providers,  
21 including wireless, cable and small businesses, that may  
22 have been excluded from criteria so as to favor particular  
23 technologies. . .<sup>16</sup>

24

25 The FCC indicated that competitive neutrality should be applied in both the  
26 collection and the distribution of USF support.<sup>17</sup>

27

28 **Q Has the FCC determined that USF support should be made available to all**  
29 **ETCs?**

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<sup>14</sup> *Id.* Paragraph 48.

<sup>15</sup> *Id.* Paragraph 47.

<sup>16</sup> *Id.* Paragraph 49.

<sup>17</sup> *Id.* Paragraph 48.

1     A     Yes. In implementing federal universal service fund support, the Joint Board  
2           recommended and the FCC ordered that support be available to all ETCs. Both  
3           the Joint Board and the FCC determined that universal service support must be  
4           portable in order to be consistent with the principle of competitive neutrality.<sup>18</sup>  
5           The FCC stated that,

6                     [a]s support becomes explicit and portable, we expect that  
7                     competitors will find that they are increasingly able to  
8                     compete for customers outside of the urban and business  
9                     communities where we have seen more extensive  
10                    competitive entry to date. Support will be available to  
11                    competitors that win higher cost customers from an  
12                    incumbent carrier.<sup>19</sup>  
13

14    **Q     Has the FCC provided any guidance on the implementing the concept of**  
15           **competitive neutrality?**

16    A     Yes. In the context of a Declaratory Ruling released August 10, 2000, which  
17           provided guidance to states on the designation of ETCs, the FCC made statements  
18           relevant to the discussion of competitive neutrality and the portability of support.  
19           The FCC stated its belief that,

20                    [a] new entrant faces a substantial barrier to entry if the  
21                    incumbent local exchange carrier (LEC) is receiving  
22                    universal service support that is not available to the new  
23                    entrant for serving customers in high-cost areas. . . . No  
24                    competitor would ever reasonably be expected to enter a  
25                    high-cost market and compete against an incumbent carrier  
26                    that is receiving support . . . We believe that it is  
27                    unreasonable to expect an unsupported carrier to enter a  
28                    high-cost market and provide a service that its competitor  
29                    already provides at a substantially supported price.<sup>20</sup>

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<sup>18</sup> *Seventh Report and Order*, paragraphs 71, 73.

<sup>19</sup> *Id.* Paragraph 15.

<sup>20</sup> In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, CC Docket No. 96-45, *Declaratory Ruling*, released August 10, 2000, paragraphs 12, 13. (*Declaratory Ruling*)

1 The FCC went on to state that “[i]f new entrants are not provided with the same  
2 opportunity to receive universal service support as the incumbent LEC, such  
3 carriers will be discouraged from providing service and competition in high-cost  
4 areas.”<sup>21</sup> The FCC affirmed its position that a competitively neutral support  
5 mechanism should be available to both the incumbent and competitive ETC  
6 serving in high-cost areas.<sup>22</sup>

7  
8 **Q Are the Commission’s current procedures and forms which are utilized to**  
9 **evaluate the certification of an ETC’s use of USF support consistent with the**  
10 **FCC’s definition of and guidance on competitive neutrality?**

11 **A** Yes. The Commission’s forms and procedures for certifying the use of USF  
12 “neither unfairly advantage or disadvantage one provider over another.” The  
13 Commission examines the use of support in a manner that avoids creating  
14 inequities among carriers. As the Joint Board has said:

15 . . . universal service payments should not distort the  
16 development of nascent competitive markets. Universal  
17 service support should neither incent nor discourage  
18 competitive entry.<sup>23</sup>  
19

20 Carriers, both incumbent ETCs and competitive ETCs alike, must demonstrate  
21 that they utilize the high-cost support payments which require certification in  
22 areas that have been deemed high-cost by the FCC.

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<sup>21</sup> *Id.* Paragraph 23.

<sup>22</sup> *Id.* Footnote 45.

<sup>23</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, released February 27, 2004, paragraph 96. (*Recommended Decision*)

1    **Q     Specifically, is it consistent with the FCC's guidance on competitive**  
2       **neutrality to require an ETC to exclude expenses or allocate only a portion of**  
3       **those expenses incurred in AT&T territory from its demonstration of its use**  
4       **of USF support?**

5       Yes. Allowing a competitive ETC to utilize high-cost support, which it received  
6       by providing service to high-cost customers, in the service area that has not been  
7       deemed high-cost would turn the FCC's efforts to maintain competitive neutrality  
8       on its head. The competitive ETC would then operate at an advantage that is not  
9       market-driven. That is, the use of USF support would allow the competitive ETC  
10      an unfair advantage over the incumbent provider; it would allow for an advantage  
11      that is gained not through the efficient provisioning of service but through the  
12      misuse of support. The principle of competitive neutrality would be violated.  
13      Thus, the Commission's requirement to exclude or allocate expenses incurred in  
14      AT&T territory is appropriate.

15

16    **Q     Does the requirement to exclude expenditures made by a competitive ETC in**  
17       **the service area of an incumbent carrier that does not receive high cost**  
18       **support discourage entry?**

19    **A**It is clear that the FCC is concerned that a competitive carrier would have no  
20       incentive to enter a market if it could not utilize the same support received by the  
21       incumbent provider. The competitive and incumbent carriers would be put on  
22       unequal footing based on the carrier's ability to take advantage of a subsidy rather  
23       than its abilities in the marketplace. Thus, the FCC required support to be ported

1 to competitive ETCs in a competitively neutral manner. However, when the  
2 incumbent is not eligible to receive support, there is no support available to the  
3 competitive provider for serving that same area. Thus, under these policies, the  
4 market is able to function unbiased by the imposition of subsidies. The  
5 competitive carrier is able to make decisions regarding entry based on the  
6 economics of providing service.  
7

8 **Q Does USF support make all prior subsidization explicit?**

9 A No. The KUSF was also established to make subsidies explicit. Carriers may  
10 apply for designation as an ETC eligible to receive KUSF support in addition to  
11 USF support. KUSF support is available in areas served by AT&T and addresses  
12 subsidization that is not addressed by the USF. If competitive ETCs believe that  
13 they are at a competitive disadvantage in the AT&T service area because of the  
14 availability of subsidies, the appropriate way to address that concern is by gaining  
15 access to KUSF support.  
16

#### 17 **FCC's Certification Requirements**

18 **Q Is the Commission's current method of certifying the use of support**  
19 **consistent with that recommended by the FCC?**

20 A Yes. The FCC stated that it would require those ETCs that it designates to  
21 provide a five-year plan demonstrating how high-cost support will be used. The  
22 FCC states that,

23 [t]o demonstrate that supported improvements in service  
24 will be made throughout the service area, applicants should



1 provide this information for each wire center in each  
2 service area for which they expect to receive universal  
3 service support . . .<sup>24</sup>  
4

5 ETCs would also be required to make an annual filing of,

6 . . . coverage maps detailing the amount of high-cost  
7 support received for the past year, how these monies were  
8 used to improve the network, and specifically where signal  
9 strength, coverage, or capacity has been improved in each  
10 wire center in each service area for which funding was  
11 received.<sup>25</sup>  
12

13 Clearly, the FCC is requiring ETCs to provide information on a wire center basis  
14 for those service areas (defined by the incumbent's service area) that receive  
15 support. No showing is required for those wire centers in service areas that do not  
16 receive support because it is not contemplated that high-cost support would be  
17 utilized in those areas. One can infer that the FCC then believes that high-cost  
18 support should be utilized in high-cost areas.  
19

## 20 Other FCC USF Policies

21 **Q Are the Commission's current certification procedures consistent with the**  
22 **FCC's intent to more precisely target USF support?**

23 **A** Yes. Since the FCC laid out its framework for USF support in its 1997 *Report*  
24 *and Order*, the FCC has been striving to put in place methodologies that precisely  
25 target high-cost support so that ". . . all carriers will receive comparable support  
26 for performing comparable functions."<sup>26</sup> The FCC began by putting in place a

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<sup>24</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, released March 17, 2005, paragraph 23. (*ETC Designation and Certification Order*)

<sup>25</sup> *Id.*

<sup>26</sup> *Report and Order*, paragraph 144.

1 forward-looking model for high-cost support for non-rural carriers. The FCC  
2 believed the forward-looking model could eventually be designed to target  
3 support to smaller geographic areas than reflected by the accounting of the  
4 incumbent carriers.<sup>27</sup> In mid-2004, the FCC requested that the Joint Board  
5 examine, “. . . how support can be effectively targeted to rural telephone  
6 companies serving the highest cost areas, while protecting against excessive fund  
7 growth.”<sup>28</sup> Most recently, one topic of the Joint Board’s En Banc Hearing on  
8 February 20, 2007 addressed the targeting of support through the use of  
9 geographic information systems. It makes no sense to expend such effort to target  
10 support to the highest-cost areas only to permit carriers to use support in areas that  
11 have not been deemed to be high-cost areas.

12  
13 **Public Interest and the Use of USF Support**

14 **Q Is it in the public interest to require competitive ETCs serving some areas**  
15 **that receive high-cost support and some areas that do not receive high-cost**  
16 **support to use the USF support in the high-cost area?**

17 **A** Yes, it is in the public interest to require USF support to be used to provide  
18 service in high-cost areas. It has been determined that it is in the public interest to  
19 achieve universal service and to utilize explicit support to achieve that goal. The  
20 FCC has determined, either through a forward-looking model or examination of  
21 embedded costs, those areas that are high-cost and need assistance in provisioning

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<sup>27</sup> *Id.* Paragraphs 225-226.

<sup>28</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, released June 28, 2004, paragraph 1.

1 of universal service. It is consistent with the goal of achieving universal service  
2 that USF support be spent in the intended areas.

3  
4 **Q Are some areas that are not supported by the USF rural areas? Is it unfairly**  
5 **discriminatory to disallow the use of USF support in those rural areas that**  
6 **the FCC has not deemed eligible for support?**

7 A Many areas served by incumbent and competitive ETCs would be considered  
8 rural by most measures. However, in Kansas, the cost of providing service in  
9 AT&T's territory does not exceed the benchmark established by the FCC. The  
10 rural areas in AT&T's service area are, by the FCC's measures, less costly to  
11 serve than other rural areas in the state. While it may be discriminatory to treat  
12 rural areas differently, it is not unfairly discriminatory. As discussed earlier, the  
13 FCC has provided sufficient justification for the disparate treatment through its  
14 orders supporting the forward-looking model and its stated goal of targeting  
15 support to the highest cost areas. Additionally, the United States Court of  
16 Appeals for the Fifth Circuit has determined that,

17 . . . [t]he Act only promises universal service, and that is a  
18 goal that requires sufficient funding of *customers*, not  
19 *providers*. So long as there is sufficient and competitively-  
20 neutral funding to enable all customers to receive basic  
21 telecommunications services, the FCC has satisfied the Act  
22 . . . <sup>29</sup> (emphasis in original)

23  
24 Thus, it would not be in the public interest to allow support that is to be utilized to  
25 serve a particular customer or group of customers to be diverted to serve  
26 customers that have not been eligible for such support.

---

<sup>29</sup> *Alenco Communications, Inc. et al. v. FCC*, No. 98-60123, 2000 (5<sup>th</sup> Cir. Jan. 25, 2000).

1    **Q     Is the requirement for a competitive ETC to utilize USF support only in the**  
2           **service areas of incumbent ETCs which receive support consistent with the**  
3           **universal service goal of providing consumers in rural and high-cost areas**  
4           **with access to telecommunications services that are reasonably comparable**  
5           **to those services provided in urban areas?**

6    A     Yes. As stated above, the FCC has determined that USF support should be  
7           targeted to the highest cost service areas. If the incumbent ETC does not receive  
8           USF support in its rural exchanges, then it must find other means of meeting the  
9           universal service goal of making service available at rates reasonably comparable  
10          to urban areas. The Commission has certified that AT&T is able to do so and the  
11          FCC has accepted such certification. As indicated previously, KUSF support is  
12          available for some rural exchanges and competitive ETCs may apply for  
13          designation to receive KUSF support. The competitive ETC is treated consistent  
14          with the treatment of the incumbent in a competitively neutral manner.

15

16   **Allocation of Cost**

17   **Q     Carriers need flexibility to build out their networks. Do the Commission's**  
18           **allocation procedures permit the ETC to use discretion to meet its customers'**  
19           **needs?**

20   A     Yes. The Commission's allocation procedures allow ETCs to make investments  
21          in the manner they determine to be most efficient. If the investment is made in an  
22          unsupported area, the Commission allows the ETC to allocate that portion of the  
23          investment benefiting customers in areas that do receive support to demonstrate

1 that it is using support for the intended purpose. Facilities do not have to be  
2 located within the supported area, but in order to certify the use of USF, some  
3 portion of the facilities must be used to provide service to customers in a  
4 supported area. This is consistent with the FCC's determination that a  
5 competitive ETC does not necessarily need to make a showing that it has facilities  
6 in the area for which it are seeking designation but must be able to serve  
7 customers in the service area using its own facilities (or a combination of its own  
8 facilities and resale of another carrier's service).

9  
10 **Other**

11 **Q Do the Commission's current USF certification requirements adequately**  
12 **address whether an ETC's investments and expenses are used for the**  
13 **intended purpose to justify certification for continued receipt of high cost**  
14 **USF support?**

15 **A** The Order Opening Docket dated November 21, 2006, indicates that the review  
16 conducted in this proceeding ". . . is to be limited to the issue raised by Alltel."  
17 This question, suggested by one of the parties, appears to go beyond the scope the  
18 Commission has set for this docket. However, Staff believes the current forms  
19 and procedures are sufficient for the Commission to certify the use of support.  
20 Staff maintains historical information submitted by the ETCs and can review that  
21 information along with newly submitted information when making  
22 recommendations to the Commission regarding certification.

23

1     **Certification by the FCC and Other States**

2     **Q       What are the certification filing requirements established by the FCC?**

3     **A       As mentioned previously, in order for an ETC designated by the FCC to continue**  
4           to receive support for the following calendar year, or retain its eligible  
5           telecommunications carrier designation, it must submit the following annual  
6           reporting information no later than October 1, 2006, and thereafter annually by  
7           October 1 of each year:

8           •       A progress report on its five-year service quality  
9           improvement plan, including maps detailing its progress  
10          towards meeting its plan targets, an explanation of how  
11          much universal service support was received and how it  
12          was used to improve signal quality, coverage, or capacity,  
13          and an explanation regarding any network improvement  
14          targets that have not been fulfilled. The information shall  
15          be submitted at the wire center level;

16          •       Detailed information on any outage, as that term is  
17          defined in 47 C.F.R. § 4.5, of at least 30 minutes in  
18          duration for each service area in which an eligible  
19          telecommunications carrier is designated for any facilities it  
20          owns, operates, leases, or otherwise utilized that potentially  
21          affect at least ten percent of the end users served in a  
22          designated service area; or a 911 special facility, as defined  
23          in 47 C.F.R. § 4.5(e). Specifically, the eligible  
24          telecommunications carrier's annual report must include  
25          information detailing: the date and time of onset of the  
26          outage; a brief description of the outage and its resolution;  
27          the particular services affected; the geographic areas  
28          affected by the outage; steps taken to prevent a similar  
29          situation in the future; and the number of customers  
30          affected.

31          •       The number of requests for service from potential  
32          customers within the eligible telecommunications carrier's  
33          service areas that were unfulfilled during the past year.  
34          The carrier shall also detail how it attempted to provide  
35          service to those potential customers, as set forth in  
36          §54.202(a)(1)(A);

37          •       The number of complaints per 1,000 handsets or  
38          lines;

- Certification that it is complying with applicable service quality standards and consumer protection rules;
- Certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2);
- Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.<sup>30</sup>

As discussed earlier, the FCC indicated that the five-year plan and progress reports filed by ETCs are to be made in “each service area for which they expect to receive universal service support” or the ETC must provide an explanation of why no service improvements were made in a wire center for which support was received.

**Q What are other states requiring for certification?**

A According to the National Regulatory Research Institute’s (NRRRI) “State Certification Requirements for Eligible Telecommunications Carriers” paper, 30 of the 51 jurisdictions have explicitly adopted the recommendation of the FCC on additional annual reporting requirements.<sup>31</sup> This number, however, may underestimate the level of state compliance with the FCC’s recommendations because although some states do not have specific rules on ETC certification, they still follow the FCC’s framework. In addition, three states, Maine, New Mexico and Wisconsin are in the process of rulemaking.

---

<sup>30</sup> *ETC Designation and Certification Order*, paragraph 69.

<sup>31</sup> Liu, Jing, “State Certification Requirements for Eligible Telecommunications Carriers,” National Regulatory Research Institute, February 2007, page 3.

1 Despite the slight differences in rule specifications in each state, most states that  
2 have adopted the ETC annual reporting recommendation are requiring ETC  
3 applicants and existing ETCs to file information in the following categories:  
4 quality improvement plan or update/progress report on quality improvement plan;  
5 description of designated area and maps; use of USF support; public interest  
6 showing; compliance with applicable standards; service provision commitment;  
7 comparable usage plan; adequate emergency capabilities; record of outages;  
8 unfulfilled service requests, and consumer complaints; advertising activities for  
9 universal service programs and commitment to provide equal access to long  
10 distance carriers. Selected state specific information is provided in Exhibit JB1.  
11 The selected states provided NRRI with detailed information regarding their  
12 certification requirements.

13

14 **Q Do any states' certification processes incorporate a requirement similar to**  
15 **the one in question here?**

16 A Staff emailed the following question to the contact names listed in the NRRI  
17 Report:

18 Q. Does your state Commission allow an ETC to use  
19 federal high cost support in an area where it has been  
20 designated an ETC but the area does not receive high cost  
21 support? (Example: An ETC is designated an ETC in  
22 a RLEC study area and also several Verizon exchanges, but  
23 Verizon does not receive high cost support. Would your  
24 state Commission allow the ETC to use the high cost  
25 support that it receives for the RLEC area in the Verizon  
26 exchanges?)  
27



1 To date, Staff has received 27 responses. The responses are provided in Exhibit  
2 JB2. For ease of review, the information provided in the Exhibit is in the form of  
3 a chart containing a quote from the email response provided by the contact  
4 person, with one exception. As indicated in the Exhibit, Alabama provided its  
5 response through a phone conversation which Staff is attempting to verify through  
6 email.

7  
8 From this query, Staff has found that California, Indiana and Mississippi impose a  
9 similar requirement. Indiana indicates that ETCs are not allowed to spend more  
10 than the IAS support amount received in Verizon exchanges. Mississippi  
11 indicates that ETCs are limited to using USF support in high cost wire centers.  
12 Illinois states that the issue was recently raised by AT&T. The Illinois contact  
13 expects the Commission to rule on the issue later this year. Staff from Alabama,  
14 Kentucky, and Oklahoma indicate that while the question has not been raised at  
15 their Commissions, they believe high-cost support should be utilized in high-cost  
16 areas.

17  
18 **Q Does this complete your testimony at this time?**

19 **A Yes.**

**CERTIFICATE OF SERVICE**

07-GIMT-498-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing DIRECT TESTIMONY PREPARED BY JANET BUCHANAN was delivered electronically this 4th day of May, 2007, to the following:

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**CERTIFICATE OF SERVICE**

07-GIMT-498-GIT

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Administrative Specialist

STATE OF KANSAS                     )  
  ) ss.  
COUNTY OF SHAWNEE             )

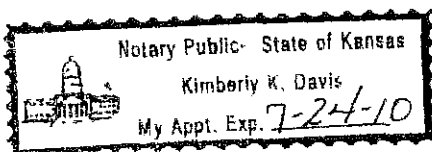
**VERIFICATION**

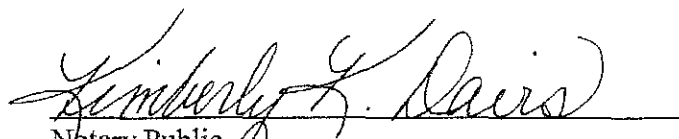
Janet Buchanan, being duly sworn upon her oath deposes and states that she is Chief of Telecommunications for the Utilities Division of the Kansas Corporation Commission, State of Kansas, that she has read and is familiar with the foregoing *Testimony*, and that the statements contained therein are true and correct to the best of her knowledge, information and belief.



Janet Buchanan  
Chief of Telecommunication, Utilities Division  
Kansas Corporation Commission  
State of Kansas

Subscribed and sworn to before me this 3<sup>rd</sup> day of May, 2007.



  
Notary Public

My Appointment Expires:

July 24, 2010

### **Selected State Specific Information**

#### **Colorado:**

Each ETC must submit a copy of cost study filing made on July 31<sup>st</sup> to NECA for the current year. If an ETC is not required to file a cost study with NECA, then a copy of the line count filing made to the FCC and USAC Administrator is to be submitted. A copy of the company's Colorado-specific trial balance for the previous year is also required.

For annual reporting, an ETC must report the total amount of all federal high cost support received in the previous calendar year and year-to-date through June 30 for the current calendar year. An ETC must also provide, for the previous two calendar years, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an ETC and an explanation regarding any network improvement targets that have not been fulfilled. This shall include the carrier's build-out plans and budgets for projects, upgrades or installations planned but not yet completed during the current calendar year applicable to local exchange service. This information must be submitted at the wire center level or at the authorized service area. If service improvements in a particular wire center are not needed, an explanation of why improvement was not needed and how funding will otherwise be used to further the provision of supported services in that area. (Also adopted the remainder of the FCC's requirements.)

#### **Illinois:**

Illinois requires ETCs to file information consistent with the FCC's recommendations on an annual basis. It should be noted that Midwestern Telecommunications, Inc.'s (MTI) requested ETC designation serving territory would qualify only for "low income" USF support and no "high-cost" USF support. MTI agreed to commit to the following conditions: (1) all "low income" USF funding received will be used to support subsidized rates for Lifeline and Link Up customers; (2) MTI will provide written notification to the ICC within 3 weeks of any change and/or circumstance that would render MTI eligible to receive USF high-cost support; and (3) in the event of any such change and/or circumstance, MTI will file with the ICC, within 6 weeks of such change, a revised five-year spending plan to account for appropriate use of all high-cost USF support received.

The applicant certifies that the USF will be used solely for the intended purposes. In this case, MTI commits to use all "low income" USF funding received to support subsidized rates for Lifeline and Link Up customers.

#### **Iowa:**

Carriers that are not requesting high cost support must indicate this in their application. Carriers that are not seeking or receiving high-cost support are not required to file a network improvement plan, nor are they required to file annual updates.

Carriers that do receive high-cost support, must file a rolling one-year extension or update their initial network improvement and maintenance plan on or before May 1<sup>st</sup> of each year. ETCs must provide an explanation of the benefits to specific wire centers, rather than reports on a wire center level. For existing ETCs, as of the effective date of the rules, the reporting period for the initial plans shall be January 1, 2006 through December 31, 2007. These plans shall be filed with the Board on or before August 1, 2006. The rolling one-year extensions shall cover the calendar year following the current year's annual certification filing.

On or before May 1<sup>st</sup> of each year all ETCs must file a progress report on their network improvement and maintenance plan for the prior calendar year's activities. This report must include coverage area map(s) detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity. If support was used for something other than these activities, such as maintenance or prior investments, etc., the report shall include a relevant explanation. The report shall include an explanation regarding any network improvement targets that have not been fulfilled. If there have been no changes to the ETCs coverage area, the ETC should clearly indicate this fact with a supporting explanation. The reporting of expense and investment information shall include an explanation of the benefits and impacts to specific wire center(s). For certification purposes the meaning of the phrase "wire center" shall be based on how it is identified by the North American Numbering Plan Administrator.

**Missouri:**

Within thirty days of receiving ETC status, each Commercial Mobile Radio Services carrier designated as an ETC must make an informational filing with the Missouri PSC consisting of a complete description of its service offerings. Such informational filings are to be amended as service offerings are introduced or modified.

All ETCs, including incumbent LECs that received federal high-cost support, must, by August 15<sup>th</sup> of each year, submit an affidavit executed by an officer of the company attesting that federal high-cost support is used consistent with the Missouri PSC's rules and the Telecommunications Act of 1996. The affidavit will be accompanied by documentation of support received and costs incurred. The Missouri PSC or its staff may request additional information regarding the annual certification.

Each request for ETC designation should include: (1) intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations affected by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts; (2) a two-year plan demonstrating, with specificity, that high-cost universal service support shall only be used for the provision, maintenance and upgrading of facilities and services for which the support is intended in the Missouri service area in which the ETC designation was granted.

Each ETC must submit a demonstration that high-cost support was used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout the

Missouri service area for which ETC designation was granted and that such support was used in addition to any expenses that ETC would normally incur.

ETCs must publicize the construction of all new facilities that will enhance services in un-served or underserved areas so that consumers are aware of the improved service.

ETCs must maintain a record of customer complaints that have been received by the company in a manner that includes, at a minimum: the end-user name the account number; a description of the complaint; the date the complaint was filed; the resolution; and the amount of refund or credit, if any.

ETC must also maintain a record complaints from consumers in the Missouri service area in which ETC designation was granted that have been submitted to or filed with the FCC for which the company has knowledge in a manner that includes, at a minimum: a description of the complaint; the date the complaint was filed; the date the complaint was resolved; the resolution of the complaint and the amount of refund or credit, if any.

**Montana:**

ETCs must provide an affidavit stating that the ETC will use all USF support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. ETCs must comply with the Montana PSC's Service Quality rules. Among the Service Quality Rules are the following:

- 90% of the carrier's service order installations not requiring construction or special engineering shall be completed within 3 business days after appropriate pre-installation fees are paid. The intervals commence with the receipt of application (unless a later date is requested by the applicant.)
- 95% of the carrier's service orders requesting construction or special engineering shall be filled no later than 30 days after the customer has made such application (except where the customer requests a later date) after appropriate pre-installation fees are paid. In the event of the carrier's inability to so fill such an order, the customer will be advised and furnished the date when it will be available.
- Each carrier shall make commitments to customers at to the date of installation of all service orders. 90% of such commitments shall be met (except customer-caused delays and acts of God.)
- The carrier must have at least one business office to provide customers and others with access to personnel who can provide information on services and rates, accept and process service applications, explain customer' bills, adjust errors, and generally represent the carrier. If one business office serves several exchanges or states, toll-free calling to that office must be provided and the office must be staffed during Montana business hours.
- The carrier shall provide to the customer a commitment time by which the trouble will be cleared. 90% of the repair commitments shall be met.

- 90% of out-of-service trouble reports must be cleared within 24 hours, excluding Sunday. (except where access to customer's premises is required but not available, or where interruptions are caused by unavoidable causes and acts of God affecting large groups of customers.)
- An ETC applicant must submit a five-year plan that describes proposed improvements and upgrades on a wire center-by-wire center basis. The applicant must demonstrate how signal coverage, quality or capacity will improve, provide the amount and types of investment, list the geographic areas where improvements will be made, estimate the population that will be served as a result of improvements, and if improvements are not made, explain how USF support will be used to further the provision of supported services in a service area.

Additionally, the ETC must provide a progress report on its five-year service quality improvement plan on an annual basis. The data must be provided at the wire center level.

#### **Nebraska:**

Each applicant must demonstrate, through a five-year plan, how signal quality, coverage or capacity will improve due to the receipt of high-cost support and provide the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support. The data is to be provided on a wire center-by-wire center basis. The applicant must also provide the specific geographic areas where the improvements will be made and the estimated population that will be served as a result of improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area. Each ETC must submit an update of the five-year plan on an annual basis. Nebraska also adopted other requirements as suggested by the FCC.

#### **Oregon:**

For annual recertification, ETC applicants are required to provide an affidavit certifying that supported funds received will be used only for the intended purposes, as well as a copy of most recent certification submitted to FCC pursuant to 47 C.F.R. Subpart 54.809 for Interstate Access Support, or pursuant to 47 C.F.R. Subpart 54.904 for Interstate Common Line Support. All ETCs must provide information for all ILEC service areas. Competitive ETCs' network improvement plan update must demonstrate the use of support funds (other than low-income funds) received during previous calendar year, detailing year-end counts of eligible lines/handsets in service for each ILEC service area as they were reported to USAC for the past December, identification of each project for which the support was used, the actual support expenditures for each project, and status of project, the resulting benefits to consumers from each project and updates to coverage and signal strength maps, and explanation of how and why actual spending of support funds differed from spending proposed in previous network improvement plan. Competitive ETCs must also update network improvement plan for the current calendar



year and the following year, including forecast of expected support amount by type and detailed information for each project that will use support funds.

For annual recertification, wireless ETCs are required to file annual report of troubles per 100 handsets, by wireless switch, experienced by customers of the ETC within the designated service area. Troubles should be categorized into four general types: no service, network busy, interruption of service, and poor reception.

For annual recertification, ETC applicants must report on the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year, a brief description of how and where low-income program service offerings were advertised, and copies of all actual advertisements for Lifeline, Link Up, and Oregon Technology Access Program (OTAP) service offerings there were run during the previous calendar year.

**Washington:**

No later than July 31 of each year, every ETC that received federal support from any category in the federal high-cost fund must certify or report as described in WAC 480-123-070. The certification and reports are for activity related to Washington in the period January 1 through December 31 of the previous year.

No later than July 31 of each year, every ETC that received federal support from any category in the federal high-cost fund must report on: (a) the planned use of federal support related to Washington state that will be received during the period October 1 of the current year through the following September; or (b) the planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund. The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

## STATE FUSF CERTIFICATION QUERY RESULTS

Exhibit JB2

Q. Does your state Commission allow an ETC to use federal high cost support in an area where it has been designated an ETC but the area does not receive high cost support?		
State	Contact	Response
Alabama	David Teler	The Commission has not faced this issue, but Staff would not allow that. (Per phone call. Attempting to get a written response.)
Arizona	Richard Boyles	The Arizona Commission has not specifically addressed this issue. It is, however, a position that has been advocated by the rural ILECs. There is some discussion on the topic in a Recommended Opinion and Order concerning an ETC application by Western Wireless. (See T-04248A-04-0239 available via e-docket on our website if interested). For a variety of reasons (primarily a Colorado complaint matter) the Western Wireless matter has been subject to additional Staff analysis and has not gone before the Arizona Commission.
California	Geraldine Carlin	No, we don't. In the yearly certifications, the ETCs certify to the state and the state in turn certifies to FCC and USAC that the federal high-cost support will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with § 254(e) of the Telecommunications Act. In addition, in its certification, the state identifies the Study Area Group of the telecommunications carriers eligible to receive federal universal high-cost support.
Delaware	Constance Welde	Delaware does not receive any high cost support.
Idaho	Grace Seaman	Your scenario is not applicable in Idaho. Verizon North is classified as rural LEC by the FCC. Also, we do not have a CETC in a rural service area in Idaho. This may change in the next few months.
Illinois	Jeffrey Hoagg	This has not been an issue in ETC cases for which the Illinois Commerce Commission has issued orders. Therefore, we currently have no restriction on such use of federal high cost support. I note that AT&T Illinois has just recently raised this issue for the first time in an ETC case. Therefore, I expect that the Illinois Commission likely will rule on this issue sometime later this year. I cannot predict what such a ruling would be.
Indiana	Jennifer Richardson	I think I'm confused by your question so to clarify it...an ETC is designated in both RLEC and VZ exchanges then the ETC should receive high cost support (loop or model, switching, ICLS) in the RLEC exchanges and Interstate Access Support for the VZ exchanges...is this correct? So your question is whether or not that ETC can use it's high cost \$\$\$ in the VZ exchange? If that is the correct interpretation then yes. As long as the CETC is receiving some sort of USF and putting it back into the specific designated exchanges we would approve it. Now, having said that, we also subject ALL of our ETCs to the certification process -regardless if it's high cost \$\$\$ or IAS monies- the point is that it's federal money that needs to be accounted for properly. ETCs are not allowed to spend over the IAS support amount in the VZ exchanges.

# STATE FUSF CERTIFICATION QUERY RESULTS

Exhibit JB2

Q. Does your state Commission allow an ETC to use federal high cost support in an area where it has been designated an ETC but the area does not receive high cost support?		
State	Contact	Response
Kentucky	Jim Stevens	<p>(a) State certification. States that desire rural incumbent local exchange carriers and/or eligible telecommunications carriers serving lines in the service area of a rural incumbent local exchange carrier within their jurisdiction to receive support pursuant to §§ 54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to §§ 54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.</p> <p>We require that carriers certify as stated above. In your example I do not believe that support should be used in areas that for which the support was not received. If they received support for the RLEC area then it should be used in that area. This is just my opinion, the Commission has not specifically addressed the situation that you described.</p>
Maryland	Falna Kashtelyan	This does not apply to Maryland. Maryland is not a high-cost support recipient.
Missouri	Adam McKinnie	The best answer I can give to your inquiry is that Missouri has not yet dealt with this issue, as we have yet to recertify a CETC that has received ETC designation in both rural and non rural areas.
Mississippi	Vicki Helfrich	In Mississippi, we limit the ETCs use of USF monies to high cost wire centers. Each ETC files a USF Utilization Plan on June 1 <sup>st</sup> of the year. All plans are filed "Confidential". The staff works with each company to ensure that USF monies will be used in the appropriate manner and in high cost-wire centers. ETCs file quarterly reports throughout the year that lists actual costs of projects and the affected wire centers.
Nevada	Charlie Bolle	This does not exist in Nevada. However, I believe the intend of USF would not allow the USF funds to be used in areas other than the high cost area the funds were intended to be used.
New Hampshire	Jody O'Marra	NH does little with the ETCs – they self certify annually. Since the Independents are the only ETCs besides Verizon and don't operate in Verizon's territory I believe we have not addressed the question you pose.
New Jersey	Anthony Centrella	In New Jersey we have only 3 ETCs and they are the 3 incumbent local exchange carriers in our state, so the answer to your question is no.
New Mexico	Susan Oberlander	I am not aware that this issue has come up in NM or that any of our rules take a position on this. I believe that we only require that the ETC state that it has used the subsidy for the purposes intended and that they file a construction plan showing how they have used the subsidy.
New York	Carl Johnson	The issue has never come up, as far as I know. Also, it seems like the most likely candidates to fulfill your example would be wireless ETCs, which the NYPSC neither regulates nor certifies as ETCs.
North Carolina	Switzon Wigfall	The North Carolina Utilities Commission (NCUC) does not regulate nor provide any level of regulatory oversight to the wireless service providers during business in North Carolina. There are wireless service providers in North Carolina having obtained ETC designations (e.g., Sprint and Alltel), however the designations/certifications were granted by the Federal Communications Commission (FCC). There is in all likelihood an overlapping of service areas as well as capital expenditures between the wireless and wireline service providers for high cost support purposes in some instances. However, NCUC does not track any expenditures made by the wireless service providers in meeting its service obligation in the state.

## STATE FUSF CERTIFICATION QUERY RESULTS

Exhibit JB2

**Q. Does your state Commission allow an ETC to use federal high cost support in an area where it has been designated an ETC but the area does not receive high cost support?**

State	Contact	Response
North Dakota	Patrick Fahn	While there are CETCs in North Dakota, including wireless ETCs, the Public Service Commission has not addressed this issue.
Oklahoma	Barbara Mallett	The question hasn't formally come up in Oklahoma, but we've discussed it in house. If it did come up Staff would argue that high cost funding should be used in high cost areas.
Oregon	Kay Marinos	In response to your inquiry, Oregon's answer is "yes." In early dockets approving the first set of CETC applications, the Oregon Commission recognized the fungibility of support dollars between areas that generate support and other parts of a CETC's designated service area. Hence, the Commission did not impose restrictions on the geographic use of funds by ILEC areas within the CETC's designated service area. Staff encourages CETCs to develop network improvement plans that use support dollars to improve service in high cost portions of the designated service area, but CETCs are not required to allocate spending to each ILEC area based on the amount of support generated within the ILEC area.
Pennsylvania	Elizabeth Barnes	We check to see that capital expenditures are taking place in Pennsylvania if they are seeking federal funds for operating in PA if the ETC is operating in PA and another state. But I don't really do an analysis regarding where the money is spent in PA, regarding whether it is spent in a rural area of the State or in Verizon's non-rural area. For example, Hancock Telephone Company and Deposit both operate in New York mainly, and we make sure they are making expenditures towards network modernization in PA because they do receive federal high cost support for operating in PA.
Rhode Island	Brian Kent	Rhode Island has no high cost areas. There are only 2 ETC in Rhode Island, Verizon and Cox. All funds are collected and allocated elsewhere, ie other states. So the commission would never have to rule on this type of situation.
South Carolina	Douglas Pratt	South Carolina has yet to award any CETC designations. We are conducting hearings on new regulations concerning this matter, but will not have any rulings by your hearing date.
Tennessee	Louis DeBoard	In general the TRA does not regulate wireless carriers and those carriers apply to the FCC for ETC designation. Additionally, wireless carriers will report annually to the FCC for recertification. Carriers that the TRA does regulate must apply for ETC designation from the TRA, and after designation must annually report for recertification. We have just passed ETC rules regarding application as well as annual reporting that requires a 2 year improvement plan among other informational items. The required annual report will provide information on how federal funds were used to accomplish the forecasted improvements on a wire center by wire center basis, which could include wire centers that do not provide service in high-cost areas, for each TRA designated ETC. However, just as the public interest analysis is made upon application for designation, a public interest analysis is made using the information provided in the annual reports to ensure the federal funds are being used for supported services in the manner that is intended throughout the ETC's designated area. I have to think that the FCC will be making similar analysis with the information provided it by ETC carriers it designates.
Virginia	Sheree King	Virginia isn't going to be much help. Cox is the only CLEC that has requested & received ETC designation and they returned it to us after a year since there wasn't any money but a lot more paperwork. There's been only one cellular company that received its ETC from the FCC for VA and they are only in the RLEC's area.

## STATE FUSF CERTIFICATION QUERY RESULTS

Exhibit JB2

Q. Does your state Commission allow an ETC to use federal high cost support in an area where it has been designated an ETC but the area does not receive high cost support?		
State	Contact	Response
Washington	Bob Shirley	<p>A. We have a rule in Washington: WAC 480-123-080 Annual plan for universal service support expenditures.</p> <p>(1) Not later than July 31 of each year, every ETC that receives federal support from any category in the federal high-cost fund must report on: (a) The planned use of federal support related to Washington state that will be received during the period October 1 of the current year through the following September; or (b) The planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund.</p> <p>(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.</p>
West Virginia	Dannie Walker	WV does receive federal USF support, therefore, your question is moot for West Virginia.